

T. J. TODD ET AL. V. E. ROBERTS.

Cause Number 7

Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston

From the 123rd Judicial District Court, Shelby County, Hon. Jas. I. Perkins

[1 Tex. Civ. App. 8, 20 S.W. 722]

WILLIAMS, ASSOCIATE JUSTICE.—This suit was brought in Justice Court by appellee against appellant upon two drafts or bills of exchange drawn by appellant in favor of appellee on the Houston, East & West Texas Railway Company, payment of which had been refused by the drawee on presentation.

Appellant filed in the Justice Court a written plea under oath, alleging, in substance, that the drafts were given for tie timber purchased of appellee for the Houston, East & West Texas Railway; that it was understood between appellant and appellee, at the time the drafts were given, that appellant was not to be held liable upon them, but that appellee was to look to the railway company for payment; and that the drafts were intended only as memoranda or vouchers to show the amount due appellee from the company for timber.

Exceptions to this plea were sustained in the Justice Court; and in the District Court, to which the case was taken on appeal, the same ruling was made; this ruling forms the basis of the only complaint made in this court on appeal.

The ruling of the court below sustaining exceptions to the plea, was correct. The plea plainly sought to vary the written instruments sued on, by proof of parol contemporaneous agreement.

By those instruments appellant agreed that the railway company would pay the amounts specified in them, and that if the company failed to do so, appellee would. Parol evidence was not admissible to show a different agreement. *Rockmore v. Davenport*, 14 Texas, 605. The judgment is affirmed.

Affirmed.

Delivered October 11, 1892.